

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 20 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

IN RE MICHAEL C.

) 2 CA-JV 2011-0049
) DEPARTMENT B
)
) MEMORANDUM DECISION
) Not for Publication
) Rule 28, Rules of Civil
) Appellate Procedure
)
)
)

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. JV17827401

Honorable Javier Chon-Lopez, Judge

AFFIRMED

Robert J. Hirsh, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Appellant

Barbara LaWall, Pima County Attorney
By Erica Cornejo

Tucson
Attorneys for Appellee

V Á S Q U E Z, Presiding Judge.

¶1 In December 2010, seven months before his eighteenth birthday, appellant Michael C. was adjudicated delinquent after he admitted having committed assault with intent to cause injury, a class one misdemeanor. The juvenile court placed Michael on probation for six months. At the disposition hearing, the court granted the state’s request to continue the restitution hearing for two months to permit the state to investigate Michael’s eligibility for the Pima County Victim Compensation Fund (the fund), a program that negotiates victims’ medical bills and reimburses them when the offender “might not necessarily be able to pick up the entire bill.” After the fund negotiated a reduction of the victim’s medical bills and paid the outstanding balance, Michael was ordered to reimburse the fund in the amount of \$500, while his parents were held jointly and severally responsible for \$1,977.30, the full amount the fund had paid on Michael’s behalf. Arguing the state should have been equitably estopped from seeking restitution for monies paid by the fund, Michael asks this court to vacate the restitution order and to order repayment of all monies he has paid.¹ For the reasons set forth below, we affirm.

¶2 Section 8-344(A), A.R.S., provides that, when “a juvenile is adjudicated delinquent, the court . . . shall order the juvenile to make full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent” The purpose of the statute, like all “restitution statutes generally[,] is to make the victim whole.” *In re Ryan A.*, 202 Ariz. 19, ¶ 27, 39 P.3d 543, 549 (App. 2002). As in the adult criminal context, a victim of a delinquent minor’s criminal offenses must be made whole,

¹Michael has not stated, nor does the record show how much he has paid to date.

that is, compensated for any economic loss that would not have occurred but for the juvenile's delinquent conduct that directly caused the victim's loss. *In re Andrew C.*, 215 Ariz. 366, ¶¶ 9-10, 160 P.3d 687, 689 (App. 2007). We will not disturb a juvenile court's order of restitution in a delinquency proceeding absent an abuse of discretion. *In re Erika V.*, 194 Ariz. 399, ¶ 2, 983 P.2d 768, 769 (App. 1999).

¶3 At the December 2010 disposition hearing, the prosecutor explained: "So our suggestion is that the restitution hearing be set off until February. [The victim compensation program board] meets in January, and that would give them an opportunity [to decide] whether or not to approve them paying this bill, as opposed to [Michael]." Michael's attorney agreed to continue the restitution hearing, and added that she would "look into [the victim compensation program]." In February 2011, both parties again agreed to a continuance with the hope that the fund, which was considering the matter, would "reduce [Michael's] obligation." The fund ultimately negotiated a reduction in the victim's original medical bills of \$3,954.60, and paid the remaining balance of \$1,977.30 on the victim's behalf.

¶4 At the March 2011 restitution hearing, Michael asserted he had understood that once the fund paid the victim's medical bills, he would have no financial responsibility. He explained that since half of his six-month probation period had passed, he was less likely to be able to repay the fund in time to successfully terminate his probation by his eighteenth birthday in July, and asked the court to consider his obligation to pay restitution discharged because the victim's medical bills had been paid by the fund.

¶5 Relying on A.R.S. § 13-804(E), which provides, “[i]f a victim has received reimbursement for the victim’s economic loss from . . . a crime victim compensation program . . . or any other entity, the court shall order the defendant to pay the restitution to that entity,” the state argued that, because the fund had stood in the victim’s place, it was entitled to reimbursement from Michael. The prosecutor “apologize[d] to the Court and to defense counsel if [her] statement [at the disposition hearing] was misconstrued . . . that [Michael] would not have to pay any moneys at all. The statutes are very clear that the Victim Compensation Board stands in for the victim and that it doesn’t limit the minor’s ability [] to argue his ability to pay.” The court then ordered the parties to submit written briefs addressing whether Michael should be required to reimburse the fund.

¶6 At the final restitution hearing in April 2011, Michael argued that because he had waived the right to receive a full restitution hearing in reliance on the state’s assertion he would not be required to pay any restitution after the fund compensated the victim, the state should be equitably estopped from seeking restitution from him. He also asserted his family is indigent, and he is unable to obtain employment because of his learning disabilities and because of the “harsh climate economically.” Michael further contended that if a restitution hearing had been held earlier, he may have been able “to disprove all of the damages,” or, alternatively, he would have had more time to pay any court-ordered restitution before he turned eighteen. Finding Michael’s allegations of injury speculative and noting there was no evidence the victim’s medical bills were not accurate, the court ordered Michael to pay \$500 in restitution before his probation ended

in June, one month before his eighteenth birthday in July. The court also stated that, if Michael made even “a substantial effort” to pay the \$500, he would be eligible for successful termination from probation.²

¶7 On appeal, Michael asserts the same arguments he raised below. He claims the state led him to “believe he would not be responsible for the payment of any monies resulting from the consequences of his delinquent behavior,” and that he waived the right to a full restitution hearing in reliance on the state’s “representation that he would not be required to make payment to anyone,” including the fund. Michael also asserts that, based on the doctrine of equitable estoppel, the juvenile court should not have ordered him to pay restitution, notably arguing “[t]he possibility exists that the [juvenile] court may even have ordered zero restitution had a full hearing been held.”

¶8 In order to prove equitable estoppel, Michael was required to establish the following elements: “(1) affirmative acts inconsistent with a claim afterwards relied upon; (2) action by a party relying on such conduct; and (3) injury to the party resulting from a repudiation of such conduct.” *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.*, 208 Ariz. 532, ¶ 10, 96 P.3d 530, 537 (App. 2004). Michael was required to establish all of these elements by “clear and satisfactory” proof. *Facit-Addo, Inc. v. Davis Fin. Corp.*, 134 Ariz. 6, 10, 653 P.2d 356, 360 (App. 1982), quoting *Desert Vista Apartments, Inc. v. O'Malley Lumber Co.*, 103 Ariz. 23, 25, 436 P.2d 479, 481 (1968). We review a trial court’s decision to apply equitable estoppel for an abuse of discretion.

²Although the June and July dates have passed and Michael is now eighteen, we are unable to tell from this record whether the court deemed Michael’s probation successfully completed.

See City of Tucson v. Clear Channel Outdoor, Inc., 218 Ariz. 172, ¶ 65, 181 P.3d 219, 237 (App. 2008).

¶9 Assuming, without deciding, that the county attorney’s statement at the disposition hearing could be construed as an affirmative representation that Michael would not be responsible to pay restitution, we question Michael’s asserted reliance on the state’s representation. Notably, defense counsel expressly stated she would independently investigate the victim compensation program. Moreover, the juvenile court’s ruling complies with the unambiguous language in § 13-804(E) that a person who commits a criminal offense is responsible to repay a victim compensation program or any entity that pays restitution on his behalf. In addition, the court noted, and Michael does not appear to dispute, that “there is no evidence before [the court] that the medical bills were improper or that they were inflated or anything of that sort.” Finally, defense counsel informed the court that Michael’s family was indigent and that he was not currently employed, factors we can assume the court considered before it imposed restitution. We thus find unpersuasive Michael’s assertion that the court may not have ordered him to pay any restitution if a full restitution hearing had occurred, and that he was injured by the absence of such a hearing. We therefore agree with the court’s determination that Michael did not suffer any “actual and substantial injury,” a necessary element of equitable estoppel. Based on the record before us, Michael simply did not convince the court he had been injured by having participated in a program that reduced the victim’s loss, thereby substantially reducing Michael’s ultimate liability. “Questions of estoppel . . . are fact-intensive inquiries. We defer to the trial court with respect to any

factual findings explicitly or implicitly made, affirming them so long as they are not clearly erroneous.” *John C. Lincoln Hosp.*, 208 Ariz. 532, ¶ 10, 96 P.3d at 535 (citations omitted).

¶10 Based on the totality of the circumstances, the juvenile court did not abuse its discretion by rejecting Michael’s claim of equitable estoppel and by ordering him to pay restitution. Therefore, we affirm the court’s restitution order.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge